

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application. Claims 1-4 are currently being prosecuted. The Examiner is respectfully requested to reconsider his rejections in view of the amendments and remarks as set forth below.

Allowable Subject Matter

It is gratefully acknowledged that the Examiner considers the subject matter of claims 1 and 2 as being allowable.

Claim for Priority

The Examiner has not recognized the Applicants' claim for foreign priority. In view of the fact that Applicants' claim for foreign priority has been perfected, the Examiner is respectfully requested to acknowledge Applicants' claim in the next Office Action. It is furthermore noted that the present application is a divisional of U.S. Application No. 09/392,240. Acknowledgment of the claim for domestic priority to this application is also requested.

Drawings

The Official Draftsperson has not approved the formal drawings submitted by the Applicants. It is respectfully submitted that the drawings comply with the requirements of the USPTO. If the Official Draftsperson has any objections to the formal drawings, he is respectfully requested to contact the undersigned as soon as possible so that appropriate action may be taken. No further action is believed to be necessary at this time, unless the undersigned receives a notice from the Official Draftsperson.

Rejection under 35 U.S.C. 102

Claims 3 and 4 stand rejected under 35 U.S.C. 102 as being anticipated by Webb et al. (USP 6,443,622). This rejection is respectfully traversed.

First, Applicants submit that the rejection cannot properly be made using the Webb et al. reference due to the claim for priority of the present application. Applicants' priority date is September 11, 1998. This date is prior to the issuance date of the U.S. Patent and is also prior to the Section 371 date of December 23, 1999, and is also prior to the PCT publication date of December 30, 1998. While the priority date of the present application does not precede the PCT filing date of June 22, 1998, since the international filing date is prior to November 29, 2000, the date to which the reference is entitled to is the 35 U.S.C. 371 date. Since Applicants' priority date precedes this date,

Applicants submit that the Webb et al. patent is removed as a reference. It is furthermore noted that under the newly enacted AIPA, references which have an international filing date after November 29, 2000 are entitled to the international filing date as the date of the reference. However, this does not apply to the present situation. The Examiner is referred to MPEP 706.02(f)(1) for discussion of this rule.

In addition, Applicants have now amended claim 3 to include the limitation of the composite curve. This limitation is present in allowable claims 1 and 2 and accordingly, claim 3 is considered to be allowable for the same reasons.

Claim 4 depends from claim 3 and as such, is also considered to be allowable.

No Prosecution History Estoppel

Claim 3 has been amended to clarify the claimed subject matter. No prosecution history estoppel would apply to the interpretation of the limitations set forth in claims 1, 2 and 3 and the claims that depend therefrom in view of the fact that this subject matter has been continuously presented since the original filing date of the present application.

Conclusion

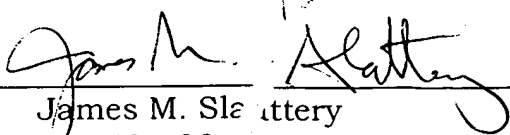
In view of the above Remarks, it is believed that the Claims clearly distinguish over the patents relied on by the Examiner. In addition, Applicants submit that the priority date of the present application predates the effective date of the reference. In view of this, reconsideration of the rejections and allowance of all the claims are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Robert F. Gnuse (Reg. No. 27,295) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: 
James M. Slattery
Reg. No. 28,380

JMS/RFG/gf
(703) 205-8000
0369-0208P

P.O. Box 747
Falls Church, Virginia 22040-0707